



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0584; FRL-9939-01-R9]

Air Quality Implementation Plan; California; Tuolumne County Air Pollution Control

District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Tuolumne County Air Pollution Control District's (TCAPCD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or "the Act"). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0584 at <https://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the

web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to batchelder.amber@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. The EPA’s Evaluation
 - A. What is the background for this proposal?
 - B. How is the EPA evaluating the rule?
 - C. Does the rule meet the evaluation criteria?
- III. Proposed Action and Public Comment
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal, including the date on which it was adopted by the District and the date on which it was submitted to the EPA by the California Air Resources Board (CARB or “the State”). The TCAPCD is the air pollution control agency for Tuolumne County in California.

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted	Submitted
TCAPCD	429	Federal New Source Review	07/06/21	08/03/21

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District’s NNSR permit program applicable to new and modified major sources located in areas designated nonattainment for the 1997 and 2015 ozone NAAQS.

On February 3, 2022, the submittal for Rule 429 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 429 in the SIP.

C. What is the purpose of the submitted rule?

Rule 429 is intended to address the CAA’s statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors.

II. The EPA’s Evaluation

A. What is the background for this proposal?

The EPA’s April 2004 designation of Tuolumne County as a nonattainment area for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) triggered the requirement for the District to develop and submit an NNSR program to the EPA for SIP approval.¹ Although

¹ CAA section 172(b) and 40 CFR 51.914.

the EPA revoked the 1997 8-hour ozone NAAQS effective April 6, 2015,² the NNSR requirements applicable to Tuolumne County based on its designation and classification for the revoked 1997 8-hour ozone NAAQS remain applicable in order to prevent future emissions from new and modified major stationary sources from increasing beyond the levels allowed, based on the area's prior designation and classification for the 1997 ozone NAAQS. Thus, because Tuolumne County was designated and classified as Moderate nonattainment for the 1997 8-hour ozone NAAQS, the District's NNSR program must satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas, including the offset ratios identified in CAA section 182(b)(5).³ Tuolumne County is also designated and classified as Marginal nonattainment for the 2015 8-hour ozone NAAQS and, therefore, subject to the NNSR requirements applicable to Marginal ozone nonattainment areas.⁴ Submission of an NNSR program that satisfies the requirements of the Act and the EPA's regulations for Moderate ozone nonattainment areas, however, would satisfy the NNSR program requirements for Marginal ozone nonattainment areas.⁵

Additional information regarding the District's nonattainment status for each pollutant is included in our Technical Support Document (TSD), which may be found in the docket for this rule.

B. How is the EPA evaluating the rule?

The EPA reviewed Rule 429 for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections

² 80 FR 12264, 12265 (March 6, 2015).

³ The EPA's determination that the Tuolumne County area had attained the 1997 8-hour ozone NAAQS by the applicable attainment date suspended the requirements to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain but did not suspend the requirement to submit an NNSR program. 40 CFR 51.918; see also 77 FR 71551 (Dec. 3, 2012) (noting that the EPA's attainment determination does not redesignate the area to attainment or relax control requirements).

⁴ 40 CFR 51.1314.

⁵ The NNSR requirements applicable to Moderate ozone nonattainment areas are identical to those that apply to Marginal ozone nonattainment areas, except that Moderate nonattainment areas are subject to a more stringent offset ratio than Marginal nonattainment areas. CAA sections 182(a)(2)(C) (requiring permit programs consistent with CAA sections 172(c)(5) and 173 for ozone nonattainment areas), 182(a)(4) (establishing 1.1 to 1 offset ratio for Marginal nonattainment areas), and 182(b)(5) (establishing 1.15 to 1 offset ratio for Moderate nonattainment areas) and 40 CFR 51.165.

172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in Moderate ozone nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal Area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);⁶ and (5) SIP revisions as set forth in CAA section 110(l) and 193.^{7,8} Our review evaluated the submittal for compliance with the NNSR requirements applicable to Moderate ozone nonattainment areas, and ensured that the submittal addressed the NNSR requirements for the 1997 and 2015 ozone NAAQS.

C. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the August 3, 2021 submittal of Rule 429, we find that the District has provided sufficient evidence of public notice, opportunity for comment, and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160-51.165, we have evaluated Rule 429 in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, including the 2015 ozone NAAQS. We find that Rule 429 satisfies these requirements as they apply to sources subject to the NNSR permit program requirements applicable to Moderate ozone nonattainment areas. We have also determined that

⁶ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

⁷ Per CAA section 110(l), SIP revisions are subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA. Additionally, CAA section 110(l) prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

⁸ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 429 satisfies the requirement in CAA section 110(a)(2)(A) that requires regulations submitted to the EPA for SIP approval be clear and legally enforceable, and we have determined that the submittal demonstrates, in accordance with CAA section 110(a)(2)(E)(i), that the District has adequate personnel, funding, and authority under state law to carry out these proposed SIP revisions.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of Rule 429 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 429 will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors in the District. Accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

III. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing to approve the submitted rule because it fulfills the relevant CAA requirements, and strengthens the SIP. We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, 40 CFR 51.160-51.165, and 40 CFR 51.307.

If finalized as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of plan-in part). In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40

CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the District rule described in Section I.A. of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: July 7, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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